

HOUSE No. 3438**The Commonwealth of Massachusetts**

PRESENTED BY:

Ruth B. Balser

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to protect the natural resources of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ruth B. Balser	12th Middlesex
James B. Eldridge	Middlesex and Worcester
Frank I. Smizik	15th Norfolk
Stephen Kulik	1st Franklin
Ellen Story	3rd Hampshire
Matthew C. Patrick	3rd Barnstable
Katherine Clark	32nd Middlesex
Peter v. Kocot	1st Hampshire
Robert P. Spellane	13th Worcester
Alice K. Wolf	25th Middlesex
Paul J. Donato	35th Middlesex
Denise Provost	27th Middlesex
Barbara A. L'Italien	18th Essex
Michael F. Rush	10th Suffolk
Stephen L. DiNatale	3rd Worcester
Steven J. D'Amico	4th Bristol
Patricia D. Jehlen	Second Middlesex
Anne M. Gobi	5th Worcester
Kay Khan	11th Middlesex

Louis L. Kafka	8th Norfolk
David P. Linsky	5th Middlesex
Carl M. Sciortino, Jr.	34th Middlesex
Mark V. Falzone	9th Essex
John W. Scibak	2nd Hampshire
Christine E. Canavan	10th Plymouth
Denis E. Guyer	2nd Berkshire
Cheryl A. Coakley-Rivera	10th Hampden
Christopher G. Fallon	33rd Middlesex
Thomas M. Stanley	9th Middlesex
Cynthia Stone Creem	First Middlesex and Norfolk
Bruce E. Tarr	First Essex and Middlesex
Susan C. Fargo	Third Middlesex
Kevin G. Honan	17th Suffolk
Linda Dean Campbell	15th Essex
Allen J. McCarthy	7th Plymouth
Sean Garballey	23rd Middlesex
Benjamin Swan	11th Hampden
Thomas P. Conroy	13th Middlesex
Willie Mae Allen	6th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT THE NATURAL RESOURCES OF THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 132B the following chapter:-

CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

Section 1. It is hereby declared to be the policy of the commonwealth that lands or easements taken or acquired for natural resource purposes, consistent with Article 97, are a vital and indispensable public natural resource and, therefore, that there shall be no net loss of public lands or easements taken or acquired for natural resource purposes as a result of disposition or change in use of these lands.

Section 2. Definitions. As used in this chapter, the following words shall have the following meanings: -

“Alternatives analysis”, a description of alternatives to a proposed disposition or change in use of lands or easements protected under Article 97, including, but not limited to an analysis of the most reasonable alternative (other than taking no action) that does not require a disposition or change in use under Article 97; the description of an alternative shall include analysis of cost, impact on current use and environmental impact.

“Article 97”, Article XLIX, as appearing in Article XCVII, of the Amendments to the Constitution.

“Article 97 lands or easements”, lands or easements taken or acquired for natural resource purposes under Article 97.

“Change in use” or “used for other purposes”, a diversion of Article 97 lands or easements, or portion thereof, from existing use.

“Disposition”, "dispose" or “disposed”, the transfer of physical or legal custody or control of lands or easements, or a portion thereof, by conveying, relinquishing, leasing for any term,

granting of interests in, or transferring by any other means physical or legal custody or control, regardless of whether the transfer is for the same or different uses, or for consistent or inconsistent purposes.

“Lands or easements”, lands; easements; conservation restrictions, agricultural preservation restrictions and watershed preservation restrictions, as defined in section 31 of chapter 184; and other restrictions or conditions contained in a deed, grant or other instrument purporting to transfer or convey an interest in land, regardless of the term of such easements, restrictions or conditions.

“Natural resource purposes”, the purposes described in Article 97.

“Owner”, the commonwealth department, agency, authority, public instrumentality, town, municipality or political subdivision that owns or has care, custody or control of the lands or easements for which there is a proposed disposition or change in use.

“Replacement land”, lands or easements acquired by the owner that are of equal or greater area, market value and natural resource value and of comparable location and use, as compared with the Article 97 lands or easements being disposed of or used for other purposes; lands or easements already protected under Article 97 shall not qualify as replacement land.

“Taken or acquired”, obtained by gift, purchase, devise, grant, exchange, lease, taking by eminent domain or otherwise, by the commonwealth, any of its political subdivisions or bodies politic, or any instrumentality thereof, or through use of public funds, including land bank funds.

Section 3. It shall be the policy of the general court not to enact legislation to allow a disposition or change in use of lands or easements taken or acquired for natural resource purposes under Article 97, unless the owner of the lands or easements provides the general court the following:-

(a) a statement from the secretary of energy and environmental affairs as to whether the lands or easements are classified as Article 97 lands or easements;

(b) a metes and bounds description of the lands or easements;

(c) a copy of the deed conveying the lands or easements to the present owner;

(d) a statement of the market value, as defined in 12 CFR 323.2(g), of the lands or easements that is substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the minimum appraisal standards set forth in 12 CFR 323.4 and which is prepared by a state certified or state licensed appraiser, as defined in 12 CFR 323.2(j)-(k);

(e) copies of statutorily required approvals by the governing body or officer of the owner, approving the disposition or change in use of the lands or easements and the acquisition of replacement land, including, if applicable, copies of required approvals by the local conservation commission, which shall have been obtained prior to approval by the governing body or officer;

(f) an alternatives analysis approved by the secretary of energy and environmental affairs;

- (g) a metes and bounds description of the replacement land;
- (h) a copy of a signed offer, signed purchase and sale agreement, fully executed lease, deed or other legal documents for the conveyance of the replacement land;
- (i) a statement of the market value, as defined in 12 CFR 323.2(g), of the replacement land that is substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the minimum appraisal standards set forth in 12 CFR 323.4, and which is prepared by a state certified or state licensed appraiser, as defined in 12 CFR 323.2(j)-(k);
- (j) a statement from the secretary of energy and environmental affairs that the proposed replacement land meets the requirements set forth in the definition of replacement land.

Section 4. Upon application of the owner, the secretary of energy and environmental affairs may grant a waiver releasing the owner from the replacement land requirements, set forth in sub-sections (g) through (j) of Section 3, conditional upon (a) subsequent to disposition there being no change in use or physical change in the lands or easements disposed other than change due to natural causes; (b) any proposed change in use being temporary and within no more than five years from the change in use the lands or easements reverting to the same state and use as existed immediately prior to the change in use; or (c) the lands or easements proposed for disposition or change in use being occupied by pre-existing buildings or sheds, which may include immediately adjacent land containing out-buildings, paved areas or landscaped areas appurtenant to, necessary for and used solely for said pre-existing buildings or sheds. If a waiver is granted such waiver shall be provided to the general court in lieu of the requirements set forth in sub-sections (g) through (j) of Section 3. Any act authorizing disposition or change in use subject to a waiver under condition (a) or (b) of this section shall require that, if at any time said condition on which the waiver is based ceases to be met, title, jurisdiction, control, and other rights and perquisites disposed shall revert to the owner or the change in use shall become invalid and cease to have statutory approval and that any deed, lease, or other instrument effecting the disposition or change in use shall so stipulate.

Section 5. The joint committee on bonding, capital expenditures and state assets and the joint committee on municipalities and regional government shall each file a report by August 30 of the second year of each legislative session with the clerks of the senate and house of representatives detailing their activities on all bills referred to them that involve dispositions or changes in use of lands or easements taken or acquired for natural resources purposes under Article 97.

Section 6. The commonwealth or its agency, authority or instrumentality shall notify the public at least 30 days prior to filing a bill to dispose or change the use of any Article 97 lands or easements.

SECTION 2. Within 6 months after the effective date of this act, the secretary of energy and environmental affairs shall develop and publish for public review and comment guidelines

95 for conducting an alternatives analysis and identifying replacement land and within 1 year after
96 the effective date of this act shall publish the guidelines in final form.